

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

USOR SITE PRP GROUP,
Plaintiff,

vs.

A & M CONTRACTORS, INC., et al
Defendants

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CIVIL ACTION NO. 4:14-cv-2441

**DEFENDANT EMPIRE TRUCK LINES, INC.'S
ANSWER AND AFFIRMATIVE DEFENSES**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Empire Truck Lines, Inc. ("Defendant" or "ETL"), and files this, its Original Answer and Affirmative Defenses; and in support thereof, will show this Court the following:

ANSWER

1. Paragraph 1 states legal conclusions for which no answer is required; however, to the extent there are factual matters contained in paragraph 1, they are all denied.

2. Paragraph 2 describes relief requested for which no answer is required; therefore ETL neither admits nor denies the allegations. To the extent there are factual matters contained in paragraph 2, they are all denied.

3. ETL does not have knowledge to either admit or deny the allegations in Paragraph 3.

4. Paragraph 4-5 state legal conclusions for which no answer is required. Consequently, ETL neither admits nor denies these allegations.

5. ETL lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 6-774; consequently, the allegations are denied.

6. Each and every allegation in Paragraphs 775-779 are denied.

7. ETL lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 780-2334; consequently, the allegations are denied.

8. For Paragraph 2335, ETL re-alleges and incorporates by reference its responses to Paragraphs 1-2334.

9. Paragraphs 2336-2352 purport to recite portions of CERCLA. Such statutory sections speak for themselves. To the extent there is factual information in these paragraphs which pertain to ETL, they are denied in their entirety.

10. For Paragraph 2353, ETL re-alleges and incorporates by reference its responses to Paragraphs 1-2334.

11. Paragraphs 2354-2375 purport to recite portions of CERCLA or other law. Such statutory sections speak for themselves. To the extent there is factual information in these paragraphs which pertain to ETL, they are denied in their entirety.

12. ETL lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 2376-2381; consequently, the allegations are denied.

AFFIRMATIVE DEFENSES

13. Plaintiff fails to allege facts sufficient to allege facts sufficient to state a claim against ETL upon which relief may be granted; moreover, Plaintiff fails to meet the pleading standard of *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Pursuant to Fed. R. Civ. P. 12(b)(6), Plaintiff's claims should be dismissed in their entirety.

14. Plaintiff lacks standing to assert these claims.

15. Plaintiff fails to allege ETL had the requisite intent to dispose of hazardous substances at the USOR site; therefore, Plaintiff has failed to state a claim for "arranger" liability under CERCLA in Countys I, II, and III of the Amended Complaint.

16. ETL denies it is liable for the releases or threatened releases alleged in the complaint; however, to the extent ETL is found liable, ETL is entitled to an offset against any such liability for the equitable share of liability of any person who would be liable under CERCLA or TWSDA.

17. ETL hereby incorporates by references all affirmative defenses raised by any and all Defendants.

18. ETL reserves the right to assert additional affirmative defenses in the event discovery or further proceedings indicate such defenses would be appropriate.

PRAYER

Defendant Empire Truck Lines, Inc. respectfully requests that Plaintiff take nothing by virtue of his claims and causes of action against Defendant; and that Defendant recovers its costs of court and such other and further relief, at law or in equity, to which Defendant may be justly entitled.

Respectfully submitted,

BAIRHILTY, P.C.

/s/ Ronald L. Bair

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**ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing was on this date automatically accomplished on all known filing users through the Notice of Electronic Filing Service and/or in accordance with the Federal Rules of Civil Procedure on this the 16th day of October, 2015.

/s/ Ronald L. Bair

RONALD L. BAIR